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7	UNITED STATES DISTRICT COURT
8	DISTRICT OF NEVADA
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10	ROGER DAVIS,
11	Petitioner, ) 2:10-cv-02116-GMN-LRL
12	vs. ) ORDER
13	BRIAN WILLIAMS, et al.,
14	Respondents.
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16	This is an action on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254
17	in which petitioner, a state prisoner, is proceeding <i>pro se</i> . On May 26, 2011, the Court decided
18	respondents' Motion to Dismiss finding that petitioner had presented a mixed petition containing
19	unexhausted claims. (ECF No. 18.) The Court offered petitioner an opportunity to show cause why
20	he had failed to exhaust his unexhausted claims under the holding <i>Rhines v. Weber</i> , 544 U.S. 269
21	(2005) or to abandon the unexhausted claims. <i>Id.</i> Petitioner was given thirty days to comply with
22	the order.
23	The time permitted for petitioner to inform the court of his decision as to the
24	unexhausted claims has long since expired and petitioner has not responded to the Court's order as
25	directed. As a result, the Court must dismissed the mixed petition as required by the holding of See
26	Rose v. Lundy, 455 U.S. 509, 521-22 (1982).

Should petitioner wish to appeal this decision, he must receive a certificate of 1 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; Allen v. Ornoski, 435 2 3 F.3d 946, 950-951 (9th Cir. 2006); see also United States v. Mikels, 236 F.3d 550, 551-52 (9th Cir. 4 2001). Generally, a petitioner must make "a substantial showing of the denial of a constitutional 5 right" to warrant a certificate of appealability. Id.; 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). "The petitioner must demonstrate that reasonable jurists would find the 6 district court's assessment of the constitutional claims debatable or wrong." Id. (quoting Slack, 529 7 8 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating 9 that the issues are debatable among jurists of reason; that a court could resolve the issues differently; 10 or that the questions are adequate to deserve encouragement to proceed further. *Id.* 11 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing 12 Section 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in 13 the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a 14 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has 15 considered the issues raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of appealability, and determines that none meet that standard. The Court 16 17 will therefore deny petitioner a certificate of appealability. 18

IT IS THEREFORE ORDERED that the petition is DISMISSED WITH **PREJUDICE**. No Certificate of Appealability is warranted and none shall issue.

The Clerk shall enter judgement accordingly.

Dated this 19th of July, 2011

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25 26 Gloria M. Navarro

United States District Judge